Supreme Court, U.S.
FILED
DEC 17 1993
OFFICE OF THE CLERK

No. 93-720

In The
Supreme Court of the United States
October Term, 1993

NATALIE HAAS STEFFEN, IN HER OFFICIAL CAPACITY AS COMMISSIONER, MINNESOTA DEPARTMENT OF HUMAN SERVICES,

Petitioner,

v.

CHARLES MITCHELL, STEVE WILSON, WESLEY BEAMON, AND CASSANDRA RIVERS,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Minnesota

RESPONDENTS' BRIEF IN OPPOSITION

LAURIE N. DAVISON
WILLIAM C. DANIELS, JR.
Mid-Minnesota Legal Assistance
430 First Ave. N. Suite 300
Minneapolis, Minnesota 55401-1780
(612) 332-1441

PAUL ONKKA
Southern Minnesota Regional Legal Services, Inc.
16174 Main Ave.
Prior Lake, Minnesota 55372
(612) 222-3749

*ANN C. COFELL
Mid-Minnesota Legal Assistance
830 W. St. Germain, Suite 300
P.O. Box 886
St. Cloud, Minnesota 56302
(612) 253-0121

*Counsel of Record

Counsel for Respondents

QUESTION PRESENTED

1. Whether the Court should overrule its longstanding and unbroken line of precedents holding that the Constitution prevents a State from discriminating against bona fide residents in the distribution of welfare benefits based solely upon the recency of their migration to the State.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
COUNTER-STATEMENT OF THE CASE	2
REASONS FOR DENYING THE WRIT	6
I. THE DURATIONAL RESIDENCY REQUIREMENT AT ISSUE HERE IS UNCONSTITUTIONAL UNDER A CLEAR LINE OF PRIOR DECISIONS OF THE SUPREME COURT	6
II. THIS CASE PRESENTS NONE OF THE FACTORS THAT WOULD WARRANT RECONSIDERATION OF SHAPIRO	10
III. THIS IS NOT AN APPROPRIATE CASE TO RESOLVE THE ISSUES RAISED BECAUSE AN INDEPENDENT STATE BASIS FOR THE DECISION OF THE MINNESOTA COURT MAY RENDER ANY DECISION BY THIS COURT LITTLE MORE THAN ADVISORY	15
CONCLUSION	17

TABLE OF AUTHORITIES

Page

MINNESOTA CONSTITUTION

Article I, § 2.....15

STATUTES

42 U.S.C. § 602(b) (1988).....13

Minn. Stat. § 256D.01, Subd. 1 (1992).....3

Minn. Stat. § 256D.065 (1992).....2, 16

Wis. Stat. Ann. § 49.015(1)(b) (1993).....14

FEDERAL DECISIONS

Attorney General of New York v. Soto-Lopez, 476 U.S. 898 (1986).....6, 7, 9, 10, 14

Dunn v. Blumstein, 405 U.S. 330 (1972).....9, 14

Eddleman v. Center Township, 723 F. Supp. 85 (S.D. Ind. 1989).....14

Edwards v. California, 314 U.S. 160 (1941).....6

Green v. Anderson, 811 F. Supp. 516 (E.D. Cal. 1993).....13, 14

Hooper v. Bernalillo County Assessor, 472 U.S. 612 (1985).....9, 10

Kirkpatrick v. Christian Homes of Abilene, Inc., 460 U.S. 1074 (1983).....16

Lowrie v. Goldenhersh, 716 F.2d 401 (7th Cir. 1983).....14

Memorial Hospital v. Maricopa County, 415 U.S. 250 (1974).....passim

Pascall v. Christie-Steward, Inc., 414 U.S. 100 (1973).....16

Patterson v. McClean Credit Union, 491 U.S. 164 (1989).....11

TABLE OF AUTHORITIES - Continued

Page

Planned Parenthood v. Casey, ___ U.S. ___, 112 S. Ct. 2791 (1992).....10, 11

Shapiro v. Thompson, 394 U.S. 618 (1969).....passim

Starns v. Malkerson, 326 F. Supp. 234 (D. Minn. 1970, aff'd. 401 U.S. 985 (1971).....14

Zobel v. Williams, 457 U.S. 55 (1982).....6, 7, 8, 9, 10

NON-FEDERAL DECISIONS

Aumick v. Bane, Index No. 2881/93 (N.Y. Sup. Ct. Monroe County, filed March 18, 1993).....13

Jones v. Milwaukee County, 485 N.W.2d 21 (Wis. 1991).....14

Mitchell v. Steffen, 487 N.W.2d 896 (Minn. Ct. App. 1992).....5, 16

Mitchell v. Steffen, 504 N.W.2d 198 (Minn. 1993).....5

Nelson v. Peterson, 313 N.W.2d 580 (Minn. 1981).....16

Nielsen v. Social Service Bd. of North Dakota, 216 N.W.2d 708 (N.D. 1974).....14

Opinion of the Justices, 257 N.E.2d 94 (Mass. 1970).....14

State v. Russell, 477 N.W.2d 886 (Minn. 1991).....15, 16

Thompson v. Estate of Petroff, 319 N.W.2d 400 (Minn. 1982).....16

Wegan v. Village of Lexington, 309 N.W.2d 273 (Minn. 1981).....16

MISCELLANEOUS

Justice Sandra Day O'Connor, Our Judicial Federalism, 35 Case W. Res. L. Rev. 1 (1984).....16

Memorial Hospital v. Maricopa County, 415 U.S. 250 (1974) Brief of Maricopa County (No. 72-1917).....12

Minnesota Department of Human Services, Summary of Minnesota Public Assistance Trends, Fiscal Year 1992.....12

TABLE OF AUTHORITIES - Continued

Page

Shapiro v. Thompson, 394 U.S. 618 (1969)
Brief of State of Connecticut (Nos. 68-9, 68-33, 68-34)
Brief of State of Pennsylvania (Nos. 68-9, 68-33, 68-34).....12

No. 93-720

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1993

NATALIE HAAS STEFFEN, IN HER OFFICIAL CAPACITY AS COMMISSIONER, MINNESOTA DEPARTMENT OF HUMAN SERVICES,

Petitioner,

v.

CHARLES MITCHELL, STEVE WILSON, WESLEY BEAMON, and CASSANDRA RIVERS,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Minnesota

---

RESPONDENTS' BRIEF IN OPPOSITION

This case does not present any issues worthy of review by this Court. The State has not alleged or shown either a conflict between federal or state courts or a departure from this Court's precedents. The State's assertion that the case presents an important question of federal law which has not yet been answered by this Court is patently false. A well-settled line of Supreme Court cases, beginning with Shapiro v. Thompson, 394 U.S. 618 (1969), has squarely addressed and rejected all of the arguments made by the State in this case. Under those settled precedents, the decision of the Minnesota Supreme Court was clearly correct.

In light of the clear precedent supporting the lower court decision, the State has had to ask this Court to overrule Shapiro

and its progeny. Yet, the State has failed to show any reason why this Court should ignore stare decisis and take the extraordinary step of overruling this long-standing and unbroken line of precedents.

Finally, a decision overruling Shapiro and reversing the Minnesota Supreme Court would not dispose of this case. Rather, the case would be returned to the Minnesota Supreme Court for a determination of the state constitutional claim. The Minnesota Supreme Court would likely find the statute invalid under the more stringent equal protection clause of the Minnesota Constitution, as did the Minnesota Court of Appeals. Thus, the decision sought by the State from this Court is not likely to change the result in this case.

COUNTER-STATEMENT OF THE CASE

The statute at issue in this case imposes a six-month durational residency requirement on the receipt of state-funded general assistance and work readiness benefits. Minn. Stat. 256D.065 (1992). For the first six months of residency, an otherwise eligible Minnesota resident is entitled to assistance in an amount up to forty percent less than longer-term residents. As explained by the Minnesota Supreme Court, the statute results in "two classes ... composed of equally needy welfare recipients, but members of the first class--solely because of shorter residency--have their benefits reduced." A8.

The four named Plaintiffs had all moved to Minnesota shortly before this lawsuit was commenced for reasons unrelated to the receipt of welfare benefits. A80-81, 83, 86. Two of the Plaintiffs, Charles Mitchell and Cassandra Rivers, had previously lived in Minnesota. A79, 86. Three of the named Plaintiffs came to Minnesota seeking permanent employment. A80-81, 83. Wesley Beamon also moved to Minnesota to be close to his three children and to attempt a reconciliation with his former wife, all of whom live in the state. A83. Some members of the class came to Minnesota in flight from abusive men. Supp. App. 30-31.[1]

As the Plaintiffs had not lived in Minnesota for six months prior to their application, each of them received a reduced grant. The full grant for a single adult receiving general assistance or work readiness is $203 per month, the amount the Minnesota legislature has deemed "necessary to maintain a subsistence reasonably compatible with decency and health in Minnesota." Minn. Stat. § 256D.01, Subd. 1 (1992). Mr. Wilson and Mr. Mitchell, who had not received welfare assistance in the state from which they moved, received the minimum grant amount of $122. A81-82. Mr. Beamon and Ms. Rivers received grants of $165 and $162 respectively, amounts equal to the grants they received before moving to Minnesota. A84, 86. The widely differing grant levels were required by the durational residency law without regard to the applicants' actual needs.

---

[1]Supp. App. refers to the Supplemental Appendix filed in the Minnesota Supreme Court.

The Plaintiffs and members of the class they represent suffered as a result of Minnesota's discriminatory durational residency requirement. They were unable to meet many of their basic human needs including shelter, essential utilities, clothing, personal hygiene items, and transportation to seek employment and obtain medical care. Supp. App. 8, 11, 18, 21, 27, 32, 39-41. As the court below noted, the reduced grant is a significant loss to new residents "especially if a Minnesota winter is at hand." A10.

Plaintiffs experienced particular hardship due to the lack of affordable housing. Cassandra Rivers, for example, used almost her entire grant to pay for her residence which she shared with another person. As a result, she had no furniture, slept on the floor, and was unable to afford basic hygiene items. A87.

There is virtually no housing which members of the class could afford on the reduced grant levels. The lowest rents for housing in different parts of the state range from $156 to $225. Supp. App. 2-3, 31, 39, 57, 59. Living out of doors results in serious medical problems including frostbite, burns from campfires, and respiratory problems. Supp. App. 8.

The legislative history indicates that the purpose of the durational residency statute is to discourage indigent people from moving to Minnesota. As the Senate author of the amendment stated:

> I look down at the courthouse, and I see people coming in each and every day. And they're getting assistance. And I don't mind the fact they're Minnesota residents, but they are coming in from other states, because the General Assistance is a little higher than some other states. I am willing to help those people who are down and out. But I think we

> have an obligation to the citizens of Minnesota, first, before we help people coming from other states.

(Emphasis added) Supp. App. 63. He later added, "I'd rather have them go to another state and get their 203 bucks." Supp. App. 72. Another senator agreed:

> I don't think there's one of us in this chamber that are opposed to helping people from here. But what I would say is that all we are doing is saying, if you're not from here, we're not going to give you the same level of benefits.

Supp. App. 78. In the House debate, one representative cited public safety problems which he asserted were caused by "people coming to town just for the welfare benefits." Supp. App. 80.

The Minnesota District Court, applying Shapiro v. Thompson and other cases decided by this Court, found the challenged statute unconstitutional because the law's primary objective was to deter indigent people from moving to Minnesota. A61. The district court also found that the statute penalized newly-arrived residents for exercising their right to travel. A62.

The Minnesota Court of Appeals affirmed the decision of the district court. Mitchell v. Steffen, 487 N.W.2d 896 (Minn. Ct. App. 1992). In addition to finding that the durational residency statute violated Plaintiffs' federal constitutional rights, the Court of Appeals found the statute also violated the more stringent equal protection clause of the Minnesota Constitution. A47-49.

Deciding only the federal constitutional issue, the Minnesota Supreme Court affirmed the decisions of the lower courts. Mitchell v. Steffen, 504 N.W.2d 198 (Minn. 1993). In reaching that result,

the court discussed and relied on the long line of cases from this Court and concluded that those cases clearly rendered the Minnesota statute unconstitutional. A12.

REASONS FOR DENYING THE WRIT

I. THE DURATIONAL RESIDENCY REQUIREMENT AT ISSUE HERE IS UNCONSTITUTIONAL UNDER A CLEAR LINE OF PRIOR DECISIONS OF THE SUPREME COURT.

The State's assertion that its durational residency statute presents a new question not previously determined by this Court is plainly erroneous. Previous decisions of this Court squarely hold that Minnesota's statute, which reduces welfare benefits necessary to meet basic needs only for new residents, is unconstitutional.

The right to travel is a long recognized and inherent part of our nation's federal form of government which applies equally to indigent people and all others. This Court has often declared that states may not try to fence out indigents or to ration benefits based upon length of residency in a state. Attorney General of New York v. Soto-Lopez, 476 U.S. 898, 904 (1986); Zobel v. Williams, 457 U.S. 55, 64 (1982); Memorial Hospital v. Maricopa County, 415 U.S. 250, 269 (1974); Shapiro v. Thompson, 394 U.S. 618, 632-633 (1969); Edwards v. California, 314 U.S. 160, 173-174 (1941).

The Minnesota durational residency statute deprives newly arrived residents of the ability to obtain basic necessities of life, including shelter, medical care, and clothing, solely because the new residents have recently exercised their right to travel. This Court, in Shapiro v. Thompson, unequivocally held that states

may not constitutionally restrict welfare benefits for new residents by imposing durational residency requirements. See also Memorial Hospital v. Maricopa County, 415 U.S. 250 (1974). The Minnesota statute is unconstitutional under the express holding of Shapiro and its progeny.

The State argues this statute is somehow different, asserting the purpose of the statute is merely to remove an incentive to travel to Minnesota. Pet. 14. This Court has squarely addressed this issue: "[A] state may no more try to fence out those indigents who seek higher welfare benefits than it may try to fence out indigents generally." Shapiro, 394 U.S. at 631. In Memorial Hospital, the Court restated this position, explaining that "[a]n indigent who considers the quality of public hospital facilities in entering the State is no less deserving than one who moves into the State in order to take advantage of its better educational facilities." Memorial Hospital, 415 U.S. at 264. Moreover, in Zobel, the Court noted that an attempt to inhibit migration into a state would encounter "insurmountable constitutional difficulties." 457 U.S. at 62, n.9.

The State also tries to distinguish this case from Shapiro and Memorial Hospital because the deprivation of benefits is partial, not total. Pet. 15. Shapiro's holding, however, was based not on the dollar amount of the reduction in benefits but upon the denial of the ability to obtain basic necessities. Shapiro, 394 U.S. at 627. This impact on the basic necessities of life has been emphasized repeatedly by this Court. See Soto-Lopez, 476 U.S. at

908 ("while the benefit sought here may not rise to the same level of importance as the necessities of life, ... it is unquestionably substantial."); Memorial Hospital, 415 U.S. at 259. As the Minnesota Supreme Court determined, "At stake in this case are payments for the basic necessities of life, just as in Shapiro and Memorial Hospital." A10.

Furthermore, contrary to the State's argument, this Court has invalidated statutes which reduced rather than wholly eliminated benefits to new state residents. Both Memorial Hospital and Zobel v. Williams were cases which involved a reduction in benefits based on the length of residency in a state. Providing partial benefits to new residents, rather than denying benefits entirely, did not save either statute. Memorial Hospital, 415 U.S. at 260; Zobel, 457 U.S. at 63-64. Indeed, two of the statutes found unconstitutional in Shapiro itself provided for some assistance to new residents. See 394 U.S. at 622 n.2 and 624 n.3.

In essence, the State argues that the right to travel and its attendant stricter scrutiny are not implicated here because new residents are in no worse position than they were in their state of prior residence. The court below aptly described the fallacy in the State's reasoning: in determining whether the right to travel is implicated, this Court "has ruled that the comparison ... is to be made between recent residents to Minnesota and other Minnesota residents, not between recent Minnesota residents and residents of other states." A8-9.

This Court has repeatedly reaffirmed this central holding of Shapiro. For example, in Memorial Hospital, the Court held:

> [T]he right of interstate travel must be seen as insuring new residents the same right to vital government benefits and privileges in the States to which they migrate as are enjoyed by other residents.

415 U.S. at 261. Indeed, the Court has so often repeated this holding as to leave no doubt as to its meaning and continued validity.[2]

Thus, it is well-settled that a state impermissibly penalizes the right to travel when it discriminates against recently-arrived residents in the distribution of payments for the basic necessities of life. Whether or not depriving newcomers of other less fundamental benefits would similarly constitute an impermissible penalty,[3] the Court has already squarely and repeatedly decided

---

[2]See Soto-Lopez, 476 U.S. at 904 ("the right to migrate protects residents of a State from being disadvantaged, or from being treated differently, simply because of the timing of their migration, from other similarly situated residents"); Zobel, 457 U.S. at 60 n.6 ("In addition to protecting persons against the erection of actual barriers to interstate movement, the right to travel, when applied to residency requirements, protects new residents of a state from being disadvantaged because of their recent migration or from otherwise being treated differently from longer term residents"); accord Hooper v. Bernalillo County Assessor, 472 U.S. 612, 618 n.6 (1985); see also Dunn v. Blumstein, 405 U.S. 330, 342 (1972) ("Durational residence laws impermissibly condition and penalize the right to travel by imposing their prohibitions on only those persons who have recently exercised that right").

[3]The State contends that the Court has not articulated "the amount of penalty needed to invoke strict scrutiny" and should therefore decide whether a lower level of scrutiny is required here because Minnesota allows some benefits for new residents. Pet. 21-22 (citing Memorial Hospital, 415 U.S. at 257; id. at 285 (Rehnquist, J., dissenting); Soto-Lopez, 476 U.S. at 921 (O'Connor, J., dissenting)). These opinions, however, in no way suggest that

the question presented in this case.[4] Therefore, this case does not merit review.

II. THIS CASE PRESENTS NONE OF THE FACTORS THAT WOULD WARRANT RECONSIDERATION OF SHAPIRO.

Undoubtedly recognizing that Shapiro and its progeny squarely control the outcome of this case, the State asks this Court to overrule these cases and adopt the dissenting view rejected by the majority in Shapiro. In making this argument, however, the State entirely ignores the principles of stare decisis.

"[T]he very concept of the rule of law underlying our own Constitution requires such continuity over time that a respect for precedent is, by definition, indispensable." Planned Parenthood v. Casey, ___ U.S. ___, 112 S. Ct. 2791, 2808 (1992). This Court has stated that while the principles of stare decisis cannot be applied mechanically, the doctrine is of fundamental importance in ensuring

---

the Shapiro penalty analysis turns on whether newcomers are afforded some benefits rather than none at all. Rather, they demonstrate that strict scrutiny is required where, as here, a case involves an attempt to deprive "newcomers of fundamental rights or essential government services ..." (Soto-Lopez, 476 U.S. at 921 (O'Connor, J., dissenting)), but that lesser scrutiny might be appropriate when less fundamental rights or services are at issue. See Shapiro, 394 U.S. at 638 n.21 (expressing no view on validity of residence requirements for such things as tuition, and hunting, fishing, or professional licenses).

[4]Indeed, as was held in Shapiro, "even under traditional equal protection tests a classification of welfare applicants according to whether they have lived in the State for one year would seem irrational and unconstitutional." 394 U.S. at 638. See also Hooper, 472 U.S. at 623; Zobel, 457 U.S. at 65. These cases demonstrate that Minnesota's durational residency requirement lacks even a rational relationship to a legitimate state purpose. Petitioner cannot show that recent arrivals are better able to live on reduced welfare benefits than long-term residents, and the State provides no reason for discriminating against these people other than the impermissible purpose of deterring travel.

that our "jurisprudential system ... is not based upon 'an arbitrary discretion.'" Patterson v. McClean Credit Union, 491 U.S. 164, 172 (1989).

A party seeking to overrule precedent must therefore demonstrate extraordinary reasons before the Court will reconsider settled precedent. These reasons have included:

> [W]hether the rule has proved to be intolerable simply in defying practical workability, whether the rule is subject to a kind of reliance that would lend a special hardship to the consequences of overruling and add inequity to the cost of repudiation, whether related principles of law have so far developed as to have left the old rule no more than a remnant of an abandoned doctrine; or whether facts have so changed or come to be seen so differently as to have robbed the old rule of significant application or justification.

Casey, 112 S. Ct. at 2808-2809 (citations omitted). In addition, the Court has asked whether the old rule "after being ... tested by experience, has been found to be inconsistent with the sense of justice or with the social welfare." Patterson, 491 U.S. at 174 (citations omitted).

The State, while citing Casey, does not even address these considerations or otherwise provide support for its assertion that this is a case where the principles of stare decisis should be set aside. The State's only argument is that "[i]n light of the budget crises that Minnesota and other states have been facing, the principles of Shapiro are thus unworkable and should be reconsidered." Pet. 21.

States have attempted to use budgetary problems to justify discriminatory residency requirements in Shapiro and in each subsequent case. The various defendants involved in Memorial Hospital and Shapiro pled budget problems in defense of their durational residency laws. In fact, the budgetary impact of the statute in Memorial Hospital was far more severe than that at issue here. See Brief of Maricopa County at 9-10, Memorial Hospital (No. 72-1917). See also Brief of State of Pennsylvania at 14, Shapiro (Nos. 68-9, 68-33, 68-34); Brief of State of Connecticut at 17, Shapiro (Nos. 68-9, 68-33, 68-34).

The argument that a budget crisis can justify circumventing the Constitution is particularly disingenuous here considering the relative amounts involved. The state estimated that it could save $890,000 in fiscal year 1992. A71. This is only two-tenths of one percent of the $465,063,087 Minnesota expected to spend on cash assistance programs in the same year. Minnesota Department of Human Services, Summary of Minnesota Public Assistance Trends, Fiscal Year 1992, at 1. Moreover, the State could have accomplished the same savings and avoided the invidious discrimination simply by reducing grants to all general assistance and work readiness recipients by a mere $3 per month.[5]

Nor does the mere enactment of four state statutes inconsistent with Shapiro's holding indicate that the holding is

---

[5]The $3 per month figure was derived by dividing the estimated savings of $890,000 by the average monthly caseload of 26,309 and then dividing by twelve. See Minnesota Department of Human Services, Summary of Minnesota Public Assistance Trends, Fiscal Year 1992, at 1.

unworkable, much less that it should be abandoned. Obviously, a state legislature's passage of a statute attempting to contravene a holding of this Court cannot dictate abandonment of that holding. In any case, at least two of the state statutes are now subject to court challenge: the California statute in Green v. Anderson, 811 F. Supp. 516 (E.D. Cal. 1993) (Levi, J., holding statute unconstitutional), appeal docketed, and the New York statute in Aumick v. Bane, Index No. 2881/93 (N.Y. Sup. Ct., Monroe County, filed March 18, 1993). And, significantly, only two states--Minnesota and California--have asked the Court to consider this case. Both those states have done so in order to save statutes which are plainly unconstitutional under Shapiro.

Moreover, current federal policy ensures that states will not be able to continue discriminating against new residents in the distribution of Aid to Families with Dependent Children (AFDC) benefits, which constitute the bulk of the nation's welfare payments. In contrast with the state of affairs at the time of Shapiro, when federal law permitted durational residency requirements, see 394 U.S. at 638-39 and n.22, federal law now expressly prohibits such discrimination, 42 U.S.C. § 602(b) (1988), and the federal government has refused to grant waivers to states wishing to institute such requirements under the AFDC program.[6]

---

[6]The government has denied waivers, recognizing that the proposals presented "serious constitutionality problems." Letter from D. Shalala, Secretary Department of Health and Human Services to M. Sullivan, Governor of Wyoming (Sept. 1, 1993); see also Letter from L. Love, Acting Assistant Secretary, Department of Health and Human Services to R. Wright, Acting Director, Illinois Department of Public Aid (July 30, 1993).

Thus, upon the expiration of waivers granted by the previous administration, it appears that no further waivers will be granted.

Finally, this Court and other courts throughout the country have relied on Shapiro without difficulty. The holding has been routinely applied to cases involving welfare benefits as well as other issues. See, e.g., Attorney General v. Soto-Lopez, 476 U.S. 898, 903-906 (1986); Memorial Hospital, 415 U.S. 250, 269 (1974); Dunn v. Blumstein, 405 U.S. 330, 338-343 (1972); Lowrie v. Goldenhersh, 716 F.2d 401, 412-413 (7th Cir. 1983); Green v. Anderson, 811 F. Supp. 516, 523 (E.D. Cal. 1993) (Levi, J., holding statute unconstitutional), appeal docketed; Eddleman v. Center Township, 723 F. Supp. 85, 88-89 (S.D. Ind. 1989); Starns v. Malkerson, 326 F. Supp. 234, 236-238 (D. Minn. 1970), aff'd. 401 U.S. 985 (1971); Opinion of the Justices, 257 N.E.2d 94 (Mass. 1970); Nielsen v. Social Service Bd. of North Dakota, 216 N.W.2d 708, 715 (N.D. 1974).[7]

In fact, it is the State's proposed rule that is inherently unworkable. The State suggests that this Court adopt a multi-factor "undue burden" test comparing for each state the extent to which a particular requirement deters travel. This would require

---

[7]Only one case has upheld durational residency requirements for welfare benefits after Shapiro. Jones v. Milwaukee County, 485 N.W.2d 21 (Wis. 1992). The statute at issue in Jones, however, imposed only a 60-day waiting period which denied benefits to a narrowly-defined class of new residents. Persons who had lived in Wisconsin during the past year, who moved to join a relative who had lived in the state for 180 days, or who moved to accept a bona fide job offer were exempt from the durational residency requirement. Wis. Stat. Ann. § 49.015(1)(b) (1993). Minnesota's scheme does not include similar exemptions. Even the State does not contend that Jones conflicts with the decision below.

that courts examine relative standards of living, budgetary impact, and empirical evidence of deterrent effect. This rule would spawn years of litigation over the validity of various discriminatory schemes. This is precisely the sort of unending inquiry that Shapiro has wisely and effectively prevented.

Thus, the State's contention that this case presents issues appropriate for reconsideration by this Court does not merely misconstrue stare decisis but simply ignores its long-standing principles altogether. Even if this Court might at some point wish to reconsider Shapiro, the State has not remotely shown that it should do so now in this case. The State's Petition should be denied.

III. THIS IS NOT AN APPROPRIATE CASE TO RESOLVE THE ISSUES RAISED BECAUSE AN INDEPENDENT STATE BASIS FOR THE DECISION OF THE MINNESOTA COURT MAY RENDER ANY DECISION BY THIS COURT LITTLE MORE THAN ADVISORY.

Although the Minnesota Supreme Court applied only the United States Constitution in determining that Minnesota Statute 256D.065 is unconstitutional, the Minnesota Constitution provides a separate basis supporting that result. The Minnesota Court of Appeals found that the statute also violated the more stringent Equal Protection Clause of the Minnesota Constitution. Minn. Const. Art. I, § 2.

The Minnesota Supreme Court has recently articulated a three-part standard to be used in determining whether a classification violates the Minnesota Equal Protection Clause. State v. Russell, 477 N.W.2d 886, 888 (Minn. 1991). The Minnesota Court of Appeals applied the three-part Russell test and found the statute

unconstitutional. Mitchell v. Steffen, 487 N.W.2d 896, 904-905 (Minn. App. 1992).[8]

Even a ruling by this Court in the State's favor will not resolve the issue of whether Minnesota Statute 256D.065 may be enforced; it will only result in a remand to the Minnesota Supreme Court to determine whether the statute violates the Minnesota Constitution. The Minnesota Supreme Court, concerned as it was about the long waiting period for basic necessities, is likely to agree with the Court of Appeals and find the statute invalid under the state constitution.

This Court has strived to avoid advisory rulings. Paschall v. Christie-Stewart, Inc., 414 U.S. 100, 102 (1973); Kirkpatrick v. Christian Homes of Abilene, Inc., 460 U.S. 1074 (1983); see also Justice Sandra Day O'Connor, Our Judicial Federalism, 35 Case W. Res. L. Rev. 1, 6 (1984). The Court should deny the Petition for a Writ of Certiorari to avoid issuing a decision which may turn out to be merely advisory.

---

[8]The state argued that the Russell test should be applied only in cases implicating race or other protected classes. The cases underlying Russell were not, however, cases involving a protected class or other fundamental rights. Wegan v. Village of Lexington, 309 N.W.2d 273, (Minn. 1981) (notice of claim against city-operated liquor store depended on type of liquor sold); Nelson v. Peterson, 313 N.W.2d 580 (Minn. 1981) (class of state employees denied right to become workers' compensation judges); Thompson v. Estate of Petroff, 319 N.W.2d 400 (Minn. 1982) (differing treatment for survival of tort depending on nature of tort).

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Dated:

Respectfully submitted,

*ANN C. COFELL
Mid-Minnesota Legal Assistance
830 W. St. Germain, Suite 300
P.O. Box 886
St. Cloud, Minnesota 56302
(612) 253-0121

*Counsel of Record

LAURIE N. DAVISON
WILLIAM C. DANIELS, JR.
Mid-Minnesota Legal Assistance
430 First Ave. N. Suite 300
Minneapolis, Minnesota 55401-1780
(612) 332-1441

PAUL ONKKA
Southern Minnesota Regional
Legal Services, Inc.
16174 Main Ave.
Prior Lake, Minnesota 55372
(612) 222-3749

Counsel for Respondents

MANAGING ATTORNEY
Ann C. Cofell

SUPERVISING ATTORNEYS
Roger C. Gruger
Angi Marie Johnson
Doug Clark

LAW OFFICES OF
ST. CLOUD AREA LEGAL SERVICES ASSOCIATION
830 W. ST. GERMAIN ST., SUITE 300
P.O. BOX 886
ST. CLOUD, MINNESOTA 56302
612-253-0121 (Voice/TDD)
1-800-622-7773 (Voice/TDD)
441-5848 Elk River • 632-5431 Little Falls
FAX 612-253-5794

ATTORNEYS
Karla A. Krueger
Rajonda J. Mason
Sarah Sheila-Stevens
Linda K. Osburn
Barbara L. Corson
Tarryl L. Clark
Sharon G. Benson

LEGAL ASSISTANTS
Marilyn Brinkman
Mary E. Becker
Gail L. Francis
Marianne Sabrowsky

December 17, 1993

Clerk of Court
United States Supreme Court
One First Street Northeast
Washington DC 20543

RE: NATALIE HAAS STEFFEN V. CHARLES MITCHELL, ET AL
NO. 93-720

Dear Clerk of Court:

Enclosed for filing and consideration by the Court in the above-entitled matter, please find the following:

1. Original and 11 copies of Respondents' Brief in Opposition;

2. Original and 11 copies of Respondents' Motion for Leave to Proceed In Forma Pauperis and Supporting Declarations; and

3. Original Affidavit of Service.

If you have any questions, please do not hesitate to contact me.

Sincerely,

LAW OFFICES OF
ST. CLOUD AREA LEGAL SERVICES

A C Cofell

Ann C. Cofell
Managing Attorney

jct
Enclosures

RECEIVED
DEC 20 1993
OFFICE OF THE CLERK
SUPREME COURT, U.S.

United Way
Agency

No. 93-720

NATALIE HAAS STEFFEN, Petitioner,

v.

CHARLES MITCHELL, ET AL., Respondents.

AFFIDAVIT OF SERVICE

I, Joyce Tetting, of lawful age, being duly sworn, upon my oath state that I did, on the 17th day of December, 1993, send out, postage prepaid from St. Cloud, MN, two packages containing:

THREE COPIES OF RESPONDENTS' BRIEF IN OPPOSITION;
ONE COPY OF RESPONDENTS' MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS; and
ONE COPY OF THREE DECLARATIONS IN SUPPORT OF MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

in the above-entitled case. All parties required to be served have been served. Proper postage was affixed to said packages, and they were plainly addressed to the following:

Jocelyn F. Olson
Assistant Attorney General
1100 NCL Tower
445 Minnesota Street
St. Paul, MN 55101-2128
(612) 282-5719

For Petitioner

Theodore Garelis
Deputy Attorney General
P.O. Box 94255
Sacramento, CA 94244
(916) 445-0767

For Amicus

Joyce Tetting
Joyce Tetting

Subscribed and sworn to before me
this 17th day of December, 1993.

Notary Public

RALONDA J. MASON
NOTARY PUBLIC - MINNESOTA
STEARNS COUNTY
My Commission Expires Sept. 12, 1998

To be filed for:

ANN C. COFELL
Mid-Minnesota Legal Assistance
830 W. St. Germain, Suite 100
P.O. Box 886
St. Cloud, Minnesota 56302
(612) 253-0121

Counsel for Respondents

RECEIVED
DEC 20 1993
OFFICE OF THE CLERK
SUPREME COURT, U.S.